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No. 07-911

FILED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

WINFORD KENT BISHOP,

Petitioner,

v.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT,

Respondent.

On Petition For Writ Of *Certiorari*
To The United States Court Of Appeals
For The Fifth Circuit

PETITION FOR REHEARING

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April 11, 2008

PENDING in the Supreme Court of New York, Appellate Division, First Department, is a Petition for Reciprocal Discipline against Bishop based upon the GA Order of January 8, 1993. Filed January 2008, at the behest of the Fifth Circuit,[1] with assistance from the GA Bar,[2] by the NY Departmental Disciplinary Committee ("DDC"), it was **submitted for decision on February 25.** Deemed a motion, the Motions Clerk advises that decisions are rendered in four to eight weeks, or **by April 21.**[3] While Bishop's inclination would be to await decision, high court employees suggest the proper course is to file this Petition for Rehearing (of *certiorari* denial on March 17) which would not go to conference before May 9. Bishop has a present intention to advise the high court by May 7 of the status of the contested NY petition.

Bishop's answer to the NY petition includes the Fifth Circuit's August 10, 2007 decision (the basis for the instant *cert.* petition) which relies heavily on reciprocal discipline imposed by the Eleventh Circuit and Northern District of GA prior to *Jones v.*

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[1] Telephone conversation initiated October 17, 2007, by John Puglise, identifying himself as Investigator for Departmental Disciplinary Committee (telephone no. 212-401-0800).

[2] Petition ¶2 states: "The Office of Chief Counsel received a copy of the Order of Disbarment [GA Order of Jan. 8, 1993] and the other documents from the State Bar of Georgia on September 10, 2007." The Petition omits any reference to the GA Order of Feb. 18, 1993, that vacated the GA Order of Jan. 8, 1993. It may be inferred that the GA Bar omitted a material fact and indeed misrepresented the true state of the GA Record of Proceedings to the DDC, an arm of court.

[3] Telephone conversation April 2, 2008, with Ronald Uzenski, Motions Clerk, A.D., 1st Dept. (telephone no. 212-340-0423).

Flowers, 547 U.S. 220 (2006), but which ignores Bishop's multiple citations to *Jones v. Flowers* and progeny.

Bishop's NY answer proves that the GA Bar and GA Supreme Court denied to him 14th Amdt. Due Process on the basis of numerous NY cases imposing duties of due diligence on plaintiffs.[4]

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[4] *Miron Lumber Co. v. Phylco Realty Dev. Co.*, 151 Misc.2d 620, 572 N.Y.S.2d 992 (City Civ. Ct. 1991) (NY law has an aversion to service of process by certified or registered mail and requires service by first class mail); *Dzembo v. Goran*, 178 A.D.2d 778, 577 N.Y.S.2d 691 (3 Dept. 1991) (plaintiff seeking to serve a defendant must utilize due diligence to locate the defendant's home address where the home address is available from a check of state records of car registrations or from local and state boards of elections, various public utilities, telephone records, post office, or property tax records. Where such information is available, service on a defendant at its office is fatally defective, despite a contention that a defendant engages in affirmative conduct designed to prevent a plaintiff from learning the defendant's home address as where a defendant's office employee refuses to give the defendant's home address to a process server); *Reinhard v. City of New York*, 34 A.D.3d 376, 825 N.Y.S.2d 44 (1 Dept 2006) (in disciplinary proceeding against NY firefighter, a process server's visiting the firefighter's home address three times over two days, affixing letter to door, mailing letter by first-class and certified mail, and sending copies of letter to firefighter's attorney and his union representative were held together to satisfy due process); *Jacoby v. New York State Bd. For Prof. Med. Cond.*, 295 A.D.2d 655, 743 N.Y.S.2d 192 (3 Dept. 2002) (plaintiff Board failed to show that personal service could not have been reasonably made with due diligence. Since defendant doctor's personal records were located at the Dep't of Education, the Board offered no explanation why service was not attempted at the permanent address so listed with the Dep't.); *Monteseoca v. Krams*, 194 Misc.2d 620, 755 N.Y.S.2d 581 (City Civ. Ct. 2003)

Bishop anticipates that the NY court will strongly disagree with the Fifth Circuit, Eleventh Circuit, NDGA and hold that the GA Bar and GA Supreme Court deprived him of 14th Amdt. Due Process. The NY court may be highly offended by the GA Bar's omission of material fact (the vacating GA Order of February 18, 1993) and resulting misrepresentation of material fact to the DDC, its agent. Added to the U.S. Supreme Court's own apparent decision not to initiate disciplinary proceedings against Bishop (member of its Bar since 1978), **this would create a clear conflict on the same state of facts which would enable the Supreme Court of the United States on *certiorari* to set minimum Due Process standards for federal and state disbarment proceedings and reciprocal attorney discipline**. For these reasons, his Petition for Rehearing should be granted – or stayed pending a NY decision highly likely to be boldly conflicting.

Respectfully submitted,

Winford Kent Bishop

(plaintiff's service of defendant at private mailbox maintained by him at commercial store required *vacatur* of default judgment in personal injury case, absent showing that attempts were made to secure defendant's residential or business addresses and serve process at either).

See also Sanders v. Elie, 29 A.D.3d 773, 816 N.Y.S.2d 509 (2 Dept. 2006) (plaintiff suffering personal injury failed to demonstrate that service by any of the ordinary methods was impracticable, as required for relief under statutory provision for service "as court directs"); *Harkness v. Doe*, 261 A.D.2d 846, 689 N.Y.S.2d 586 (4 Dept. 1999); *CC Home Lenders v. Cioffi*, 294 A.D.2d, 742 N.Y.S.2d 101 (2 Dept. 2002).

CERTIFICATE OF COUNSEL

I hereby certify that this Petition for Rehearing is submitted in good faith and not for delay. This Petition for Rehearing is restricted to the grounds set out in Rule 44.2.

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Winford Kent Bishop